

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHESTER NOYES, ET AL.,)	
)	
Plaintiffs)	
v.)	Civ. No. 97-78-B
)	
HUNGER UNITED STATES)	
SPECIAL HYDRAULIC CYLINDER)	
CORP.)	
)	
and)	
)	
PEERLESS DIVISION, LEAR-SIEGLER,)	
INC.,)	
Defendants)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Plaintiffs, Chester and Kelly Noyes, brought this products liability action against Defendants, Peerless Division, Lear-Siegler, Inc. (“Third-Party Plaintiff” or “Peerless”) and Hunger United States Special Hydraulic Cylinder Corp. (“Third-Party Defendant” or “Hunger”), for injuries arising out of the explosion of a hydraulic cylinder manufactured by Hunger. Prior to obtaining service on Hunger, Plaintiffs and Hunger settled their claims. Plaintiffs also settled their claims with Peerless. After these settlements, Peerless brought a Third-Party Complaint against Hunger, seeking contribution and indemnification for all monies paid to Plaintiffs and for its attorneys’ fees and costs.¹ Before the Court is Hunger’s Motion to Dismiss this Third-Party Complaint for lack of personal jurisdiction, or, in the alternative, to transfer this action to the

¹ Peerless originally filed a cross-claim against Hunger in its Answer to Plaintiffs’ First Amended Complaint, alleging its right to contribution and/or indemnification. Since Plaintiffs settled their claims with Hunger before Hunger was ever served with the summons and Complaint, Hunger alleged that this cross-claim was never properly served. As a result, Peerless sought and received leave from this Court to file this Third-Party Complaint against Hunger.

United States District Court for the Northern District of Ohio, Western Division. For the reasons set forth below, Hunger's Motion is DENIED.

A. Personal Jurisdiction

"Personal jurisdiction implicates the power of a court over a defendant."² Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 144 (1st Cir. 1995). In deciding a motion to dismiss for lack of personal jurisdiction, a court may use one of several standards. These include the prima facie standard, the preponderance standard, and the likelihood standard. See Boit v. Gar-Tec Products, Inc., 967 F.2d 671, 675-78 (1st Cir. 1992) (explaining the various standards). The one most commonly used, and the one the Court finds appropriate for the circumstances of this case, is the prima facie standard. Under this standard, the Court determines "whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction." Id. at 675. "To defeat a motion to dismiss when the court uses this [prima facie] method the plaintiff must make the showing as to every fact required to satisfy 'both the forum's long-arm statute and the due process clause of the Constitution.'" Id. (quoting U.S.S. Yachts, Inc. v. Ocean Yachts, Inc., 894 F.2d 9, 11 (1st Cir. 1990)). A plaintiff's showing of personal jurisdiction must be "based on evidence of specific facts set forth in the record." Id.

² The Court may arrive at a finding of personal jurisdiction under a theory of either specific or general personal jurisdiction. Foster-Miller, Inc., 46 F.3d at 144. "General jurisdiction exists when the litigation is not directly founded on the defendant's forum-based contacts, but the defendant has nevertheless engaged in continuous and systematic activity, unrelated to the suit, in the forum state." Id. As Hunger persuasively argues, general jurisdiction is lacking in this case, because there is insufficient evidence that Hunger regularly does business in Maine. The Court, therefore, focuses on an analysis of specific jurisdiction, which "requires weighing the legal sufficiency of a specific set of interactions as a basis for personal jurisdiction." Id.

Pursuant to Maine’s long-arm statute, 14 M.R.S.A. § 704-A, Maine’s courts may exert personal jurisdiction over any party who transacts any business in the state, or who commits a tort or causes a tortious act to be done, if either the tort itself or the consequences of the tort occur in the state. 14 M.R.S.A. § 704-A(2)(A) and (B). The statute provides that it “shall be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the United States Constitution, 14th amendment.” 14 M.R.S.A. § 704-A(1). The Due Process clause, in turn, requires that two conditions be met before a court in Maine may assert personal jurisdiction over a nonresident defendant. First, “the defendant must have purposely established ‘minimum contacts’ with the forum such that [it] can reasonably anticipate being haled into that forum’s court.” U.S.S. Yachts, Inc., 894 F.2d at 11 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (citations omitted)). Second, “personal jurisdiction over the defendant must comport with ‘fair play and substantial justice.’” Id. (citing Burger King, 471 U.S. at 476 (citations omitted)).

The Court is persuaded that Third-Party Defendant’s Motion to Dismiss for lack of personal jurisdiction should be denied. First, the Court is satisfied that Hunger established “minimum contacts” with Maine to the extent that it could reasonably anticipate being haled into a Maine court. While the mere “‘placement of a product into the stream of commerce, without more, is not an act of the defendant purposely directed toward the forum State’” sufficient to satisfy the minimum contacts requirement, Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 85 (1st Cir. 1997) (citation omitted), the record indicates that Hunger had additional contacts with Maine. In particular, Peerless calls the Court’s attention to the fact that Hunger faxed Mr. Noyes and Mr. Mann, the two people injured in the underlying industrial accident, instructions

concerning how to repair the cylinder that eventually exploded.

Moreover, the Court finds that assertion of personal jurisdiction over Hunger would comport with “fair play and substantial justice.” The dispute between Peerless and Hunger is based on common law, contractual, and statutory indemnification and contribution. Contrary to Hunger’s assertions, the Court is persuaded that litigation of this matter in Maine would not impose an undue burden upon Hunger, and that the parties can be provided with a prompt and efficient resolution to this controversy in this Court. The Court, accordingly, denies Hunger’s Motion to Dismiss for lack of personal jurisdiction.

B. Change of Venue

Hunger alternatively moves this Court to transfer this action to the United States District Court for the Northern District of Ohio, Western Division, pursuant to 28 U.S.C. § 1404. Section 1404(a) provides that “[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized case-by-case consideration of convenience and fairness.’” Steward Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988) (citation omitted).

The Court is satisfied that, under the circumstances of this case, Hunger’s Motion for a Change of Venue should be denied. Third-Party Plaintiff’s choice of forum deserves deference, Ashmore v. Northeast Petroleum Div. Of Cargill, Inc., 925 F. Supp. 36, 39 (D. Me. 1996), and while the Northern District of Ohio may be a more convenient forum for Hunger, Hunger has failed to establish that the Northern District of Ohio would be a more convenient forum for

Peerless. Moreover, Hunger acknowledges that Judge Katz of the Northern District of Ohio previously refused to exercise jurisdiction over this dispute, stating in part that “[i]f Hunter [sic] is subject to personal jurisdiction in Maine, the [indemnification] issue ought to be litigated in that forum, since the issue was raised there first, on Peerless’s cross-claim.” Hunger United States Special Hydraulic Cylinder Corp. v. Peerless Division, Lear Siegler, Inc., No. 3:97 CV 7667, at 6 (N.D. Ohio Dec. 22, 1997). Having found that Hunger is subject to personal jurisdiction in Maine, the Court denies Hunger’s Motion for a Change of Venue.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this ____ day of May, 1998.